SUPREME COURT, U.S.
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No. 15-339

In The
Supreme Court of the United States

MICHAEL ROSS,

Petitioner,

v.

SHAIDON BLAKE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Did the Fourth Circuit misapply this Court's precedents in holding, in conflict with several other federal courts of appeals, that there is a common law "special circumstances" exception to the Prison Litigation Reform Act that relieves an inmate of his mandatory obligation to exhaust administrative remedies when the inmate erroneously believed that he had satisfied exhaustion by participating in an internal investigation?

PARTIES TO THE PROCEEDINGS

The petitioner is Lieutenant Michael Ross, a correctional officer employed by the Maryland Department of Public Safety and Correctional Services ("Department"). The respondent is Shaidon Blake, a prisoner in the Department's custody.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The majority and dissenting opinions of the United States Court of Appeals for the Fourth Circuit are reported at 787 F.3d 693 (4th Cir. 2015). Pet. App. 1-29. The opinion and order of the United States District Court for the District of Maryland are unreported. Pet. App. 29-63.

JURISDICTION

The basis for jurisdiction in the district court was 28 U.S.C. § 1331. The court of appeals issued its decision on May 21, 2015. On June 16, 2015, the court of appeals denied Lt. Ross's petition for rehearing en banc. Pet. App. 64. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), states in relevant part:

> No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other Federal Law, by a prisoner confined in any jail, prison, or other

correctional facility until such administrative remedies as are available are exhausted.

STATEMENT

The Prison Litigation Reform Act of 1995 ("PLRA") requires that a prisoner "properly" exhaust available administrative remedies before bringing an action with respect to prison conditions, *Woodford v. Ngo*, 548 U.S. 81, 93 (2006), including an action that claims the use of excessive force by prison guards, *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The PLRA's exhaustion provision is mandatory, and this Court will not read exceptions into it where "Congress has provided otherwise." *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001). This case presents the question of the validity of a judicially-crafted exception to the PLRA's "proper" exhaustion requirement where a prisoner "reasonably," but erroneously, believes that he satisfied the requirement.

1. Congress's Adoption of Mandatory Exhaustion of Administrative Remedies for Prisoner Litigation

Congress enacted the PLRA to reform prisoner litigation, "stem the tide" of meritless prisoner lawsuits that were overwhelming the federal judiciary, 141 Cong. Rec. S7527 (daily ed. May 25, 1995) (remarks of Sen. Kyl), *reprinted in* 1 Legislative History of the Prison Litigation Reform Act of 1996, Pub. L.

No. 104-134, at doc. 14 (Bernard D. Reems, Jr. & William H. Manz eds., 1997) (hereinafter Reems & Manz), and "reduce the intrusion of the courts into the administration of the prisons," 141 Cong. Rec. H14098 (daily ed. Dec. 6, 1995) (remarks of Rep. LoBiondo), *reprinted in* Reems & Manz, at doc. 18.

In 1995, the federal courts were faced with "an alarming explosion in the number of lawsuits filed by State and Federal prisoners." 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) (remarks of Sen. Dole), *reprinted in* Reems & Manz, at doc. 18. The number of prisoner lawsuits filed in federal courts had increased from 13,629 in 1980 to 41,679 in 1995, when they constituted nearly 17 percent of the total civil cases filed in federal district courts. United States Courts, Statistics & Reports, U.S. District Courts Judicial Business Tables, Table C-2 (Sept. 30, 1980 – Sept. 30, 1995). Prisoner lawsuits were "clogging the courts and draining precious judicial resources." 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (remarks of Sen. Kyl), *reprinted in* Reems & Manz, at doc. 8.

Moreover, a "high percentage" of prisoner suits were "meritless, and many [were] transparently frivolous." *Gabel v. Lynaugh*, 835 F.2d 124, 125 n.1 (5th Cir. 1988). These suits "tie[d] up the courts, waste[d] judicial resources, and affect[ed] the quality of justice." 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) (remarks of Sen. Dole), *reprinted in* Reems & Manz, at doc. 12. As one federal judge put it, a prisoner who "actually suffers a meaningful deprivation must hope that in that sea of frivolous prisoner

complaints, his lone, legitimate cry for relief will be heard by a clerk, magistrate or judge grown weary of battling the waves of frivolity." *Cotner v. Campbell*, 618 F. Supp. 1091, 1096 (E.D. Okla. 1985), *aff'd in part, vacated in part sub nom. Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986).

Congress had enacted a limited exhaustion provision in 1980 to ease the burden of prisoner litigation on the federal courts, *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 509 (1982), but the law did not have much of an effect. Under the 1980 Civil Rights of Institutionalized Persons Act ("CRIPA"), Pub. L. No. 96-247, 94 Stat. 349, a district court had discretion to temporarily stay litigation brought by a prisoner challenging prison conditions while the prisoner exhausted administrative remedies. That discretion could be exercised only if the prison's administrative process was found to be "plain, speedy, and effective"[1] *and* the court found that exhaustion was "appropriate and in the interests of justice." *Porter*, 534 U.S. at 523 (quoting CRIPA, Pub. L. No.

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[1] The 1980 statute required the United States Attorney General to "promulgate minimum standards for the development and implementation of a plain, speedy, and effective system for the resolution of grievances." 42 U.S.C. § 1997e(b)(1) (1994). A district court could require exhaustion only if "the Attorney General ha[d] certified or the court ha[d] determined that such administrative remedies [were] in substantial compliance with the minimum acceptable standards" issued by the Attorney General "or [were] otherwise fair and effective." 42 U.S.C. § 1997e(b)(2) (1994).

96-247, 94 Stat. 35, as amended, 42 U.S.C. § 1997e (1994)).

Because CRIPA's limited exhaustion provision had been so ineffective, Congress replaced it with the PLRA's mandatory, pre-filing exhaustion requirement: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

Thus, in enacting the PLRA, Congress "eliminated both the discretion to dispense with administrative exhaustion and the condition that the remedy be 'plain, speedy, and effective' before exhaustion could be required." *Booth*, 532 U.S. at 739. Congress expected that this change would reduce the quantity and improve the quality of prisoner suits in at least three ways. As this Court has explained, the PLRA (1) provides "prisons with a fair opportunity to correct their own errors," (2) "persuade[s]" some prisoners "not to file an action," and (3) creates an administrative record that assists courts in evaluating the merits of each case. *See Woodford*, 548 U.S. at 94-95.

In addition, by removing the requirement that the Attorney General and the courts pre-screen States' grievance procedures to ensure that they met certain minimum standards, the PLRA furthered another important congressional purpose: to end the federal courts' micromanagement of the States' prison

systems. *Woodford*, 548 U.S. at 93 ("PLRA attempts to eliminate unwarranted federal-court interference with the administration of prisons"); 141 Cong. Rec. S14414 (daily ed. Sept. 27, 1995) (remarks of Sen. Hatch) ("We believe that it is time to wrest control of our prisons from the lawyers and the inmates and return that control to competent administrators appointed to look out for society's interests as well as the legitimate needs of prisoners."), *reprinted in* Reems & Manz, at doc. 12; 141 Cong. Rec. H14105 (daily ed. Dec. 6, 1995) (remarks of Rep. LoBiondo) (stating that the PLRA would "[r]educe the intrusion of the courts into the administration of the prisons"), *reprinted in* Reems & Manz, at doc. 19.

2. Maryland's Administrative Remedy Procedures

Maryland has a simple process to address inmate grievances that applies to "all types of complaints" a prisoner may have, with only four limited exceptions that are not relevant here.[2] Pet. App. 77-78; J.A. 312. The process, which expressly covers complaints about the "use of force," J.A. 312, is initiated by an inmate with a simple request for an administrative remedy (or "ARP") submitted to the warden of the institution. Pet. App. 8, 77-78. The administrative remedy process

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[2] The exceptions pertain only to complaints about parole decisions, inmate discipline, the withholding of mail, and inmate classification. Pet. App. 77-78; J.A. 312.

allows for a variety of forms of relief, including "redress" and "compensation." J.A. 320.

If the initial request is denied, the inmate may appeal to the State's Commissioner of Correction, who oversees Maryland's prison system. Pet. App. 8, 78. If that appeal is denied, the inmate may then appeal the Commissioner's decision to the Inmate Grievance Office, an independent entity outside the institution and within the Department. Pet. App. 8, 78.

The Department's Division of Correction (the "Division"), which manages the State's prisons, offers numerous resources to ensure that inmates understand the grievance process. The Division publishes directives that govern the process, *see* J.A. 311-27 (excerpts from directives applicable at the time of the events in this case), and makes those directives available in the prison library, Pet. App. 78. The Division also gives a mandatory orientation that covers the grievance procedures, Pet. App. 74-75, and provides every inmate a handbook that summarizes the procedures in layman's terms, Pet. App. 77-81. The handbook explains that a full description of the administrative remedy process is available in the prison library and that each institution has an administrative remedy coordinator to provide forms, assist in filling out forms, and answer questions about the process. Pet. App. 78. The handbook also cautions inmates to pay attention to directions and filing deadlines that are stated on the forms. Pet. App. 78.

If the administrative remedy procedure is not available for a particular type of claim, an inmate may file a grievance directly with the Inmate Grievance Office. J.A. 315 (explaining that the Inmate Grievance Office has the power to hear a grievance in the first instance); *see also* Md. Code Ann., Corr. Servs. § 10-206 (providing that inmates may submit any grievance to the Inmate Grievance Office, but authorizing that office to require inmates to first exhaust the ARP, if available); Code of Maryland Regulations ("COMAR") § 12.07.01.02D (providing that an inmate need exhaust the ARP process before filing grievance with the Inmate Grievance Office only if the ARP is available). Among other remedies, the Inmate Grievance Office's regulations allow for an award of compensation to an inmate. COMAR § 12.07.01.10D.

3. The Internal Investigative Unit

The Department's Internal Investigative Unit ("IIU") is charged with investigating alleged criminal law violations, and other serious misconduct by correctional officers and other employees, and alleged criminal law violations committed by inmates, visitors, and other individuals that affect the safety or security of the Department's facilities or programs. Md. Code Ann., Corr. Servs. § 10-701(a); COMAR § 12.11.01.03A(1). The IIU does not have any authority to remedy a prisoner's complaint, nor does it have any authority to discipline a correctional officer or other employee. Md. Code Ann., Corr. Servs. § 10-701

(providing that the IIU's authority is limited to investigating alleged criminal acts and other misconduct of employees and others and reporting the results of the investigation); COMAR § 12.11.01.03 (same). The IIU's role in the disciplinary process of correctional officers is merely investigatory. *See* Md. Code Ann., Corr. Servs. Title 10, subtitle 9 (establishing exclusive procedures for investigation and discipline of correctional officers for misconduct); COMAR Title 12, subtitle 11, ch. 1 (setting forth the limited scope of IIU's investigatory and reporting responsibilities); Md. Code Ann., Corr. Servs. §§ 10-907 – 10-911 (providing that IIU conducts investigation but disciplinary proceedings are conducted by other officials within the Department). Thus, under Maryland law, discipline of correctional officers is entirely separate from both the administrative remedy procedure and the Inmate Grievance Office.

4. Factual Background

Respondent Shaidon Blake is a prisoner, serving a sentence of life imprisonment, in the custody of the State of Maryland. J.A. 226. In June 2007, Mr. Blake was an inmate at the Maryland Reception, Diagnostic and Classification Center. Pet. App. 3.

On June 21, 2007, as a result of conduct observed during a recreation period, Candis Fields, the supervising officer, charged Mr. Blake with several disciplinary infractions, which required that he be placed in the segregation unit. J.A. 201, 205, 221-22. While

then-Lieutenant James Madigan and then-Sergeant Michael Ross were escorting Mr. Blake from his cell to the segregation unit, Mr. Madigan struck Mr. Blake in the face multiple times. J.A. 203. After Captain Calvin Vincent's preliminary investigation concluded that Mr. Madigan used excessive force, J.A. 245-48, Captain Vincent recommended that Mr. Madigan be disciplined, J.A. 203-04, and made a referral to IIU to investigate Mr. Madigan's alleged assault of Mr. Blake, J.A. 186, 191, 196, 248. Captain Vincent also recommended that the warden take disciplinary action against Mr. Madigan. J.A. 204. Effective July 13, 2007, Mr. Madigan resigned in lieu of termination. J.A. 259, 260.[3]

Mr. Blake admitted having received, prior to the incident, a copy of the inmate handbook, which contains information about the administrative remedy process. J.A. 148. However, Mr. Blake did not, at that time or subsequently, initiate an ARP grievance or file any claim directly with the Inmate Grievance Office related to this incident. Mr. Blake has admitted that he never read the Division's directives about the

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[3] In June 2007, when this incident took place, the authorized state official was required to take disciplinary action against a correctional officer within 30 days from the date the official became aware of the officer's misconduct. *Western Corr. Inst. v. Geiger*, 371 Md. 125, 129 (2002) (citing Md. Code Ann., State Pers. & Pens. § 11-106)). The time limitation has since been extended to 90 days for misconduct and removed for certain criminal conduct. 2010 Md. Laws ch. 194, § 1, amended by 2014 Md. Laws ch. 252, § 1.

inmate grievance procedures, and so never relied on them. J.A. 174. Instead, he merely assumed that he did not need to file for an administrative remedy because he believed that, in his words, "it was handled" through the IIU investigation. J.A. 173-74.

5. The Internal Investigation

Based on Captain Vincent's referral, an IIU investigator began a criminal investigation into Mr. Madigan's assault on Mr. Blake. J.A. 191-92. On September 30, 2008, the investigator filed the IIU criminal investigation report recommending that the criminal investigation be closed. J.A. 190, 195. The IIU report lists Mr. Blake as the inmate, Captain Vincent as the complainant, Mr. Madigan as the only suspect, the offense as "Assault by Lt. James Madigan," and the subject of the investigation as "Inmate Shidon [sic] Blake was allegedly assaulted by Lieutenant James Madigan on June 21st, 2007." J.A. 186-89. The report states that a witness statement was taken from Lt. Ross, J.A. 191, and that Lt. Ross was escorting Mr. Blake when the incident occurred, J.A. 192, 193, but otherwise does not mention Lt. Ross. A duty officer's checklist attached as an exhibit to the report similarly identifies Mr. Blake as the victim, Mr. Madigan as the suspect, and Lt. Ross as a witness. J.A. 197-98.

The IIU report summary states that Mr. Blake informed the investigator "that he did not want to pursue this case," and that he would "sign the waiver

form requesting that this case be closed." J.A. 195. The investigator then summarized the results of the investigation, finding that Mr. Blake "was struck several times by Lt. James Madigan while he was handcuffed from behind," that "Lt. James Madigan lost control of his emotions and did not act professionally," that Mr. Madigan was "removed from responsibilities with the agency" as a result of "conduct unbecoming of a correctional officer," and that "there was no injury sustained" by Mr. Blake. J.A. 195. The investigator did not make any findings with respect to Lt. Ross, J.A. 186-95, and recommended that the "case be closed with no further action," J.A. 195.

6. This Litigation

Mr. Blake filed suit against Mr. Madigan, Lt. Ross, and other state officials in the United States District Court for the District of Maryland on September 8, 2009. J.A. 10. In his pro se complaint, Mr. Blake stated (incorrectly) that he had filed a request for an administrative remedy and that, as a result, "the defendant James Madigan" had been fired. J.A. 12. Mr. Blake explained that he did not appeal that determination because the "warden appropriately dismissed [Mr. Madigan] from his job as a lieutenant" at the prison. J.A. 12.

In his statement of his claim, Mr. Blake alleged that, while he "was being escorted by Sgt. Michael Ross," and was handcuffed behind his back,

Mr. Madigan approached him and, unprovoked, pushed him while he was headed down a flight of stairs. J.A. 14. After a brief pause while Mr. Madigan went back into the unit, Mr. Madigan returned "and without warning or being provoked in any way by me started to punch me in the face" approximately seven times with a "circle key ring gripped in his hands." J.A. 14. Mr. Blake further alleged that Mr. Madigan then attempted to throw him to the ground. J.A. 14. According to Mr. Blake, Lt. Ross "made no attempts to stop the attack." J.A. 14.

Mr. Blake blamed Mr. Madigan for the assault; the State of Maryland, the Secretary of Public Safety and Correctional Services, and others for negligent hiring and oversight of Mr. Madigan; and Lt. Ross for failing to protect Mr. Blake. J.A. 15. Mr. Blake also averred that he was damaged psychologically and physically, including worsening of a pre-existing injury to his head and face that had earlier resulted in permanent nerve damage and migraine headaches.[4] J.A. 16, 183-85. After screening the complaint, the district court dismissed the claims against all of

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[4] The summary judgment record revealed that Mr. Blake had a pre-existing injury to the left side of his head and face as the result of a traumatic head injury suffered during a fall on June 5, 2006. J.A. 183-85. As a result, he suffered nerve damage, numbness, and pain on the left side of his face and was prescribed medication, including Neurotonin. *Id.* The Fourth Circuit's statement that Mr. Blake "was *later* diagnosed with nerve damage" as a result of the incident, Pet. App. 4 (emphasis added), is incorrect and lacks any basis in the record.

the defendants except Mr. Madigan and Lt. Ross and appointed counsel for Mr. Blake. J.A. 19-31.

Mr. Blake's appointed counsel consented to Lt. Ross filing an amended answer in exchange for Lt. Ross's consent to Mr. Blake filing an amended complaint. J.A. 138-39. In his amended answer, and later in his answer to the amended complaint and motion for summary judgment, Lt. Ross raised the defense of failure to exhaust administrative remedies. J.A. 36, 181. Mr. Madigan, who was represented by other counsel, did not raise that defense. J.A. 291-92.

In the amended complaint, Mr. Blake expanded his allegations against Lt. Ross, alleging that "over an extended period of time" Lt. Ross made no attempts to stop the attack "despite my repeated pleas for assistance." J.A. 144. Whereas the original complaint alleged that Mr. Madigan had acted alone in forcing Mr. Blake to the ground, the amended complaint alleged for the first time that both Lt. Ross and Mr. Madigan "took me to the ground in a violent manner" and that "Sgt. Ross acted with callous and reckless disregard for my rights." J.A. 144.

Lt. Ross explained in his deposition that Mr. Blake was initially compliant with Lt. Ross's instructions but that Mr. Blake grew increasingly antagonistic to Mr. Madigan. J.A. 62-65. Although Lt. Ross believed he had Mr. Blake under control, Mr. Madigan attempted to grab Mr. Blake's arm. J.A. 65-66. Lt. Ross made several attempts to de-escalate the situation. He assured Mr. Madigan that he,

Lt. Ross, had the situation under control, J.A. 67, 70, 71; attempted to remove Mr. Blake from the situation by moving him toward his destination, J.A. 72-73, 114, 124-25; and countermanded Mr. Madigan's directive that Officer Latia Woodard mace Mr. Blake, J.A. 74, 76-77. Lt. Ross also testified that he attempted to "take complete control of the whole situation" once Mr. Madigan gave the order to mace Mr. Blake, J.A. 79, 94, directed Officer Woodard to call other officers for assistance, J.A. 79, and tried to bring Mr. Blake to the floor for his own protection, both to end the confrontation and to ensure that other officers would not attempt to intervene in an ongoing confrontation when they arrived, J.A. 80-81, 83, 109-10, 114, 115, 116.

7. The District Court's Decision

In granting Lt. Ross's motion for summary judgment, the district court determined that Mr. Blake failed to exhaust administrative remedies. Pet. App. 60-61. On Mr. Blake's motion for reconsideration, the district court reversed that ruling as to Mr. Madigan, who had not properly raised the exhaustion defense, but confirmed it as to Lt. Ross.[5] Pet. App. 35-43.

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[5] At first, the district court mistakenly relied on amended directives describing the prison's administrative remedy, which took effect in August 2008, instead of the directives that applied at the time of the events in this case. Pet. App. 41-42; *see* J.A. 327-81 (amended directives). Under the 2008 directives, the court concluded that Mr. Blake failed to exhaust because he

(Continued on following page)

The district court observed that Mr. Blake had conceded that he was aware of the administrative remedy process and that he had received the handbook that describes that process. Pet. App. 41. The court found that Mr. Blake had failed to exhaust administrative remedies because of his own subjective belief that the IIU investigation relieved him of that requirement. Pet. App. 41. However, the court explained, this mistaken subjective belief did not satisfy Mr. Blake's burden to exhaust under the PLRA. To the contrary, the court determined that "[t]here [was] very little, if any, ambiguity in Maryland's inmate grievance procedures," and that, in any event, the IIU's investigation could not relieve Mr. Blake of his obligation to exhaust administrative remedies.[6] Pet. App. 38-39, 42.

8. The Fourth Circuit's Decision

A divided panel of the court of appeals reversed. Although Mr. Blake argued that his participation in the internal investigation constituted exhaustion under Maryland law, the court of appeals did not rule

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could have filed a grievance directly with the Inmate Grievance Office. Pet. App. 56-59. On reconsideration, the district court relied on the applicable directives from 2007, *see* J.A. 311-26, and again found that Mr. Blake failed to exhaust his administrative remedies, this time because he did not use the available administrative remedy procedure, Pet. App. 41-42.

[6] Mr. Blake's claims against Mr. Madigan proceeded, and a jury eventually found Madigan liable. J.A. 300. Mr. Madigan is not a party to this appeal.

on that basis. Instead, the court adopted a so-called "special circumstances" exception that the Second Circuit had previously adopted in *Giano v. Goord*, 380 F.3d 670 (2d Cir. 2004).[7] Pet. App. 9-10. Under that exception, the majority held, an inmate may be excused from exhausting his administrative remedies if he "reasonably believed that he had sufficiently exhausted his remedies." Pet. App. 2. The court of appeals did not cite any statutory support for this exception but, relying on Justice Breyer's concurrence in *Woodford*, claimed that the court could import "traditional" exceptions from administrative law into

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[7] *Giano* was one of five PLRA exhaustion cases decided by the Second Circuit on the same day, all but one of which was authored by Judge Calabresi. *See Abney v. New York Dep't of Corr. Servs.*, 380 F.3d 663 (2d Cir. 2004); *Hemphill v. New York*, 380 F.3d 680 (2d Cir. 2004); *Johnson v. Testman*, 380 F.3d 691 (2d Cir. 2004); *Ortiz v. McBride*, 380 F.3d 649 (2d Cir. 2004). As Judge Calabresi explained in *Hemphill*, these cases collectively established a "three-part inquiry" to be followed in determining whether a prisoner has exhausted administrative remedies. Under this test, the court must ask: (1) whether the remedy is "available"; (2) whether the defendant waived the defense or should be estopped from raising it because of actions taken to inhibit the plaintiff from exhausting available remedies; and (3) whether, even if the plaintiff did not exhaust available remedies, "special circumstances" justify "the prisoner's failure to comply with administrative procedural requirements." 380 F.3d at 686 (citations omitted); *but see Amador v. Andrews*, 655 F.3d 89 (2d Cir. 2011) (questioning validity of this analytical framework following the decision in *Woodford*); *Ruggiero v. County of Orange*, 467 F.3d 170, 178 (2d Cir. 2006) (reporting excessive force complaint to investigator does not excuse failure to exhaust available remedies).

the PLRA. Pet. App. 9 (citing *Woodford*, 548 U.S. at 103-04 (Breyer, J., concurring)).

The court of appeals also adopted the Second Circuit's two-prong test for determining when an inmate's failure to exhaust should be excused under this reasonable belief exception: (1) whether "the prisoner was justified in believing that his complaints in the disciplinary appeal *procedurally* exhausted his administrative remedies because the prison's remedial system was confusing" and (2) "whether the prisoner's submissions in the disciplinary appeals process exhausted his remedies *in a substantive sense* by affording corrections officials time and opportunity to address complaints internally." Pet. App. 10 (emphasis in original) (quoting *Macias v. Zenk*, 495 F.3d 37, 43 (2d Cir. 2007)).

The court of appeals held that Mr. Blake satisfied both prongs of this test. With respect to the first prong, it concluded that Maryland's grievance procedures were ambiguous because they did not specifically state that the administrative remedy procedure and an IIU investigation could proceed simultaneously. Pet. App. 12-13. The majority put the burden on Lt. Ross to disprove Mr. Blake's purported interpretation and faulted the directives for failing to affirmatively contradict that interpretation. Pet. App. 14. Thus, even though it acknowledged that Mr. Blake had never read what it called "Maryland's murky inmate grievance procedures," the majority found that he had "reasonably interpreted" them by relying

on his subjective mistaken belief that he need not file a request for administrative remedy. Pet. App. 15.

With respect to the second prong, the court held that the internal investigation served the same substantive purposes as an inmate grievance procedure because the Department had "an opportunity to develop an extensive record and address the issue internally." Pet. App. 11. The court of appeals thus excused Mr. Blake's failure to exhaust his available remedies and reversed and remanded the case to the district court. Pet. App. 15.

In dissent, Judge Agee emphasized that "[j]udge-made exceptions may be permissible when interpreting judge-made exhaustion doctrines, but they hardly seem appropriate where dealing with Congressional text." Pet. App. 21 (citations omitted). Instead, he explained, this Court has rejected every attempt to "engraft exceptions that derive from the traditional doctrines of administrative exhaustion onto the PLRA's statutory exhaustion requirement," Pet. App. 22 (internal quotation marks omitted), and this Court's decision in *Woodford* "seems inconsistent with *ad hoc* exceptions like one premised on a prisoner's 'reasonable mistake,'" Pet. App. 21.

The dissenting judge also explained that the majority misapplied its own exception. Judge Agee reasoned that Maryland's straightforward administrative remedy process was not confusing and, in any event, Mr. Blake could not have "reasonably interpreted procedures that were available to him but that

he never bothered to read." Pet. App. 20. Judge Agee also observed that "prisoner grievance proceedings and internal investigations serve different and not entirely consistent purposes." Pet. App. 19-20. Finally, Judge Agee warned that, if the majority's decision is allowed to stand, prison officials will have to "anticipate every potential misunderstanding that an inmate might have about a prison's administrative remedies and then foreclose every imaginable misunderstanding in writing." Pet. App. 26.

SUMMARY OF ARGUMENT

1. In enacting the PLRA, Congress sought to reduce the volume of meritless prisoner lawsuits overwhelming the federal judiciary, *Porter*, 534 U.S. at 524, and to reduce federal court interference into the States' administration of prisons, *Woodford*, 548 U.S. at 93. A "centerpiece" of this effort was the creation of an "invigorated" exhaustion requirement. *Porter*, 534 U.S. at 529. That requirement dictates in clear and unambiguous terms that "[n]o action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). As this Court has held, the plain language of the PLRA makes the exhaustion requirement mandatory, *Porter*, 534 U.S. at 529, and requires the "proper exhaustion" of all remedies that are "available," *Woodford*, 548 U.S. at 93.

In this case, notwithstanding this Court's prohibition against reading "exceptions into statutory exhaustion requirements where Congress has provided otherwise," *Booth*, 532 U.S. at 741 n.6, the Fourth Circuit joined the Second Circuit in recognizing a judicially-crafted "reasonable belief" exception to the PLRA's exhaustion requirement. This exception, however, has no basis in the unambiguous statutory text, pursuant to which this Court consistently has refused to approve judicially-crafted exceptions. *See Booth*, 532 U.S. at 741 n.6; *Woodford*, 548 U.S. at 91 n.2. In holding that the PLRA requires "proper exhaustion," *Woodford*, 548 U.S. at 93, including completion of "all steps that the agency holds out," *id.* at 90, this Court rejected the possibility that exhaustion could be satisfied without compliance with such remedies as are available to a prisoner. The Fourth Circuit's reasonable belief exception directly conflicts with the PLRA as construed by this Court, because it excuses a prisoner's complete failure to make use of an available remedy based solely on the prisoner's misunderstanding.

This case presents no basis for departing from this Court's practice in declining to read extra-textual exceptions into unambiguous statutory exhaustion requirements "by way of creation." *Jones v. Bock*, 549 U.S. 199, 216 (2007). "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Congress made exhaustion of administrative remedies mandatory and placed only one limitation on a prisoner's obligation

to exhaust: that the remedies be "available." 42 U.S.C. § 1997e(a). Under these circumstances, "additional exceptions are not to be implied." *TRW, Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980)). The Fourth Circuit violated these settled principles of statutory interpretation in adopting its reasonable belief exception to excuse exhaustion of an available remedy.

2. The Fourth Circuit's judicially-crafted exception also conflicts with both the history of the PLRA and the statute's broader purposes. Congress enacted the PLRA's mandatory, proper exhaustion requirement to replace a prior, ineffective exhaustion provision that had permitted district courts to require exhaustion only if they concluded that doing so would be in the "interests of justice" and that the remedies at issue were "plain, speedy, and effective." *Compare* 42 U.S.C. § 1997e(a)(1) (1994) *with* Pub. L. No. 104-134, § 101, 110 Stat. 1321, codified at 42 U.S.C. § 1997e(a) (1996). In making these changes, Congress explicitly "eliminated" judicial discretion to dispense with exhaustion. *Booth*, 532 U.S. at 739. A reasonable belief exception effectively restores to the courts the discretion to excuse noncompliance with the exhaustion of administrative remedies, discretion that Congress unambiguously intended to remove. Because the federal courts may not deprive a congressional amendment of substantial effect, this exception must be rejected. *See Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

Moreover, the Fourth Circuit's broad exception undermines the purposes of the PLRA. The exception inevitably will result in more lawsuits being filed without affording the opportunity to resolve the complaints internally through the prison's grievance system, and will embroil federal courts in the nuances of a prison's grievance systems to determine the reasonableness of a prisoner's belief as to whether he had exhausted his remedies.

3. The Fourth Circuit justified its reasonable belief exception by asserting that it could import into the PLRA traditional exceptions to judicially-crafted administrative exhaustion requirements. Pet. App. 9-10. However, even if the Fourth Circuit were correct, which it is not, "reasonable belief" was not such a traditional exception. This Court has recognized only three sets of traditional exceptions to administrative exhaustion: (1) where requiring an inmate to follow the administrative process would cause irreparable harm, (2) where exhaustion would be futile or the agency lacks any power to grant effective relief, and (3) where the agency is biased. None of these incorporates or justifies a "reasonable belief" exception. The prisoner's state of mind is irrelevant to all of these exceptions.

4. Finally, even if the Fourth Circuit were correct that a judge-made reasonable belief exception may be read into the PLRA, it misapplied that exception here. Mr. Blake could not have "reasonably interpreted" Maryland's grievance procedures, Pet. App. 15, because he "never bothered to read [them],"

Pet. App. 20. Had he done so, it would have been apparent that the prison's administrative remedy procedure was available for "all" types of complaints and contained only four exceptions, none of which applied here. Pet. App. 77-78; J.A. 312. Moreover, the internal investigation into Lt. Madigan's use of force could not have served the same substantive purposes as the exhaustion of administrative remedies because administrative remedy proceedings and internal investigations serve different goals.

Because the PLRA mandates that a prisoner exhaust available administrative remedies before bringing suit, and it is undisputed that Mr. Blake failed to file a grievance under the prison's available administrative remedy procedure, the decision of the court of appeals should be reversed.

ARGUMENT

Congress's primary purpose in enacting the PLRA's mandatory exhaustion requirement was to reduce the volume of meritless prisoner lawsuits overwhelming the federal judiciary. *Porter*, 534 U.S. at 524. "What this country needs, Congress decided, is fewer and better prisoner suits." *Jones*, 549 U.S. at 203. The Fourth Circuit's judicially-created "reasonable belief" exception functionally eviscerates this "centerpiece" of the PLRA, *Woodford*, 548 U.S. at 84, by once again making discretionary the requirement that a prisoner exhaust all available administrative

remedies before filing suit with respect to prison conditions. Contrary to the PLRA's plain meaning and congressional purpose, the "reasonable belief" exception improperly allows a district court to dispense with the PLRA's mandatory exhaustion of administrative remedies. There is no basis in either the statute or this Court's precedents for this broad exception to the PLRA's congressionally-imposed mandate that prisoners exhaust available administrative remedies before bringing suit.

I. The Plain Text of the PLRA Does Not Support a Reasonable Belief Exception, and There Is No Basis for Reading an Extra-Textual Exception into the Statute.

1. The PLRA mandates in clear and unambiguous terms that "[n]o action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). As this Court explained when construing a related provision of the PLRA, "[t]he mandatory 'shall' normally creates an obligation impervious to judicial discretion." *Miller v. French*, 530 U.S. 327, 337 (2000) (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998)). The language of the PLRA thus does not admit of a reasonable belief exception or, for that matter, any other judicially-created exceptions. To comply with the statute, if administrative remedies are available, a prisoner must exhaust them. *See*

id. (refusing to adopt an interpretation that "would subvert the plain meaning of the statute, making its mandatory language merely permissive").

Presuming as it must that Congress "says in a statute what it means and means in a statute what it says there," *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992), this Court has emphasized repeatedly that the PLRA's exhaustion requirement is "mandatory." *Jones*, 549 U.S. at 211; *Woodford*, 548 U.S. at 85; *Porter*, 534 U.S. at 524. The mandatory nature of the requirement is incompatible with the notion that courts might allow exceptions that are unstated in the statute. After all, "[m]andatory exhaustion is not satisfied by a judicial conclusion that the requirement need not apply." *Alexander v. Hawk*, 159 F.3d 1321, 1326 (11th Cir. 1998).

The Fourth Circuit's "reasonable belief" exception is not grounded in statutory text; it is instead a judicially-crafted addition purportedly drawn from administrative law. By manufacturing an exception in this way, the court of appeals has done precisely what this Court has declared that it "will not" do, which is "read exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Booth*, 532 U.S. at 741 n.6. Refusal to depart from the congressional mandate has been this Court's consistent response when asked to approve judicially-crafted exceptions to the PLRA's mandatory exhaustion requirement. *See id.*; *Woodford*, 548 U.S. at 91 n.2.

Thus, in *Booth*, this Court declined to import into the PLRA's exhaustion requirement a futility exception drawn from administrative law. 532 U.S. at 741 n.6. The inmate in *Booth* argued that where the relief he sought in the court system was not available through the administrative process, the traditional futility exception should have excused any need to exhaust. *Id.* In rejecting that argument, this Court explained that because the PLRA's exhaustion mandate came from Congress, not the judiciary, judges could "not read futility or other exceptions into" the PLRA. *Id.* at 741 & n.6. Instead, "the inmate must exhaust irrespective of the forms of relief sought and offered through administrative avenues." *Id.* at 741 n.6.

A few years later, this Court in *Woodford* refused to engraft onto the PLRA's exhaustion requirement a traditional judge-made exception to administrative exhaustion that permits individuals to raise constitutional claims in federal court even if they have failed to raise those claims properly before the agency. 548 U.S. at 91 n.2; *see id.* at 114 (Stevens, J., dissenting) (discussing exception). The Court emphasized that PLRA exhaustion is "a statutory requirement," not a judge-made doctrine, and that the proposed exception would not serve the statutory purpose of reducing the "flood of prisoner litigation in the federal courts." *Id.* at 91 n.2. Thus, even with respect to constitutional claims, the PLRA requires "proper exhaustion," meaning that an inmate must complete "all steps that the agency holds out, and do[ ] so *properly*," by

complying in full with all of the procedural rules governing the grievance process. *Id.* at 88, 90 (emphasis in original; internal quotation omitted).

The Fourth Circuit's reasonable belief exception directly conflicts with this Court's decision in *Woodford*. In determining that the PLRA's "proper exhaustion" requirement could not be satisfied by "filing an untimely or otherwise procedurally defective administrative grievance or appeal," 548 U.S. at 83-84, *Woodford* necessarily rejected the notion that incomplete or merely substantial compliance with administrative procedures would suffice. However, as recognized by the dissenting judge below, the Fourth Circuit's reasonable belief exception is "substantial compliance by another name." Pet. App. 21. Indeed, a reasonable belief exception is even more permissive than the exceptions this Court rejected in *Woodford*: Mr. Blake's grievance was not merely untimely or procedurally defective; it was non-existent. If the PLRA precludes a complaint where the underlying administrative claim was merely procedurally defective, it must be equally preclusive where the underlying administrative claim was never made.

2. This case presents no reason to deviate from this Court's consistent practice of refusing to read extra-textual exceptions from administrative law into the unambiguous language of the PLRA "by way of creation." *Jones*, 549 U.S. at 216 (internal quotation omitted). Although a judicially-created exhaustion requirement is naturally subject to judicially-created exceptions, a federal court's power to excuse

compliance with a statutory exhaustion requirement is far more limited.

"Whatever may be the scope allowed generally" for exceptions to exhaustion "where no explicit congressional command exists the problem when such a mandate is present is entirely different from one tendered in its absence." *Aircraft & Diesel Equip. Corp. v. Hirsch*, 331 U.S. 752, 774-75 (1947). "Congress," not the courts, "is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts," *Patsy*, 457 U.S. at 501, and "[a]ppropriate deference to Congress' power requires fashioning of exhaustion principles in a manner consistent with congressional intent and [the] applicable statutory scheme," *McCarthy*, 503 U.S. at 144.

Under this established principle, where Congress has not spoken, "sound judicial discretion governs," but "[w]here Congress specifically mandates, exhaustion is required." *Id.* Therefore, if Congress expressly requires exhaustion, this Court typically will not engraft judicially-created exceptions onto the statute. *See, e.g.*, *Booth*, 532 U.S. at 741 n.6; *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000); *McNeil v. United States*, 508 U.S. 106, 111 (1993); *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975); *see also Hallstrom v. Tillamook Cnty.*, 493 U.S. 20, 26-27 (1989) (refusing to read exceptions into a "mandatory" notice provision). This reticence follows from the general principle that federal courts "are not free to rewrite the statutory text," *McNeil*, 508 U.S. at 111,

nor are they "at liberty to create an exception where Congress has declined to do so," *Hallstrom*, 493 U.S. at 27.

In *Salfi*, for example, this Court held that a statutory exhaustion requirement in the Social Security Act "may not be dispensed with merely by a judicial conclusion of futility." 422 U.S. at 766. The statute, which expressly made judicial review available only after a "final" agency decision, was "something more than simply a codification of the judicially developed doctrine of exhaustion." *Id.* A nearly-identical exhaustion requirement was similarly deemed in *Shalala* to preclude courts from applying "case by case" exceptions from administrative law. 529 U.S. at 13.

Although some decisions applying this principle of construction outside the PLRA context involved jurisdictional exhaustion requirements, *see Salfi*, 422 U.S. at 766, the Court's insistence on avoiding judicial amendment of statutory exhaustion provisions has not been limited solely to requirements deemed jurisdictional. As the Court has repeatedly emphasized, a requirement can still be mandatory, and thus not subject to exceptions, even if it is not jurisdictional. That is, "calling a rule nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored." *Gonzalez v. Thaler*, 565 U.S. ___, 132 S. Ct. 641, 651 (2012); *see also Greenlaw v. United States*, 554 U.S. 237, 245 (2008) (explaining that "a rule can be inflexible without being jurisdictional" and holding that cross-appeal rule is not subject to

exceptions without deciding whether the rule is jurisdictional); *Eberhart v. United States*, 546 U.S. 12, 19 (2005) (holding time limit for filing a motion for a new trial is not jurisdictional but is still "inflexible"); *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004) (noting "difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule").

This type of "mandatory," statutorily-imposed prerequisite to suit cannot be excused by the federal courts regardless of whether the requirement is "jurisdictional in the strict sense of the term." *Hallstrom*, 493 U.S. at 26, 31 (holding that a mandatory notice requirement was not subject to exception without deciding whether the requirement was jurisdictional). Such a requirement remains "a congressionally established exhaustion imperative, not a judicially created one, and accordingly the courts lack discretion to waive it." *Hoogerheide v. I.R.S.*, 637 F.3d 634, 639 (6th Cir. 2011) (Sutton, J.); *see also Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000) (holding that, although not jurisdictional, the PLRA's exhaustion requirement is mandatory and courts cannot "engraft exceptions"); *Nyhuis v. Reno*, 204 F.3d 65, 69 n.4, 78 (3d Cir. 2000) (although exhaustion provision is not jurisdictional, it is mandatory and not subject to judicially-created exceptions).

It is not the role of federal courts "to alter the balance struck by Congress in establishing the procedural framework for bringing actions under § 1983," *Patsy*, 457 U.S. at 512, nor to second-guess that balance by creating judge-made exceptions to mandatory

exhaustion requirements. Rather, as this Court has repeatedly explained, "[s]trict adherence to the procedural requirements specified by Congress is the best guarantee of evenhanded administration of the law." *McNeil*, 508 U.S. at 113 (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)). Although the benefits of mandatory exhaustion might come at the "price" of "occasional hardship" for plaintiffs, this "was the judgment of Congress." *Shalala*, 529 U.S. at 13.

In this case, the Fourth Circuit violated these precepts of statutory interpretation by reading a judicially-created exception into the PLRA's statutory exhaustion requirement. This it cannot do, because "Congress has provided otherwise." *Booth*, 532 U.S. at 741 n.6. The majority of courts of appeals to address the issue have held that it is beyond a judge's discretion to excuse noncompliance with the PLRA's exhaustion requirement.[8]

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[8] *See, e.g.*, *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) (per curiam) (overruling a prior decision that had given district courts wide discretion to excuse the PLRA's exhaustion requirement); *Chelette*, 229 F.3d at 688 (holding that "we are not free to engraft upon the statute an exception that Congress did not place there" (internal quotation omitted)); *Nyhuis*, 204 F.3d at 73 ("[I]t is beyond the power of this court – or any other – to excuse compliance with the [PLRA's] exhaustion requirement on the ground of futility, inadequacy, or any other basis." (internal quotation omitted)); *Alexander*, 159 F.3d at 1325-26 ("Since exhaustion is now a pre-condition to suit, the courts cannot simply waive those requirements where they determine they are futile or inadequate.").

3. The sole limitation Congress placed on a prisoner's obligation to exhaust administrative remedies is that the remedies must be "available." 42 U.S.C. § 1997e(a). Thus, to determine whether a particular administrative remedy must be exhausted, Congress directed courts to "focus solely" on whether that remedy is available. *Alexander*, 159 F.3d at 1326. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW*, 534 U.S. at 28 (quoting *Andrus*, 446 U.S. at 616-17).

It is beyond reasonable dispute that the administrative remedy process was available to Mr. Blake. This Court has construed the term to mean that a remedy is "available" if the prison's "administrative process [has] authority to take some action in response to a complaint," even if it cannot provide "the remedial action an inmate demands." *Booth*, 532 U.S. at 736. So defined, the term "available" does not contain a subjective element that would hinge on the inmate's belief as to the existence, accessibility, or necessity of compliance with such remedy. Instead, the remedy's existence is a matter of objective fact, its accessibility can be readily determined, and the necessity of compliance is governed by the unambiguous command of Congress. *See Nyhuis*, 204 F.3d at 73 (By using the word available, "Congress merely meant to convey that if a prison provided no internal remedies, exhaustion would not be required.").

Under the plain language of the statute, a prisoner's misunderstanding of the prison's grievance process – reasonable or otherwise – cannot render the process unavailable. Although some courts of appeals have held that an administrative remedy is effectively unavailable when interference by prison officials prevents an inmate from using it,[9] none have found that an inmate's mere misunderstanding somehow renders the process unavailable.

In this case, the Fourth Circuit did not suggest that the prison's administrative remedy procedure was not available to Mr. Blake. To the contrary, the panel majority consciously crafted the reasonable belief exception as a way of justifying Mr. Blake's failure to use a process that clearly *was* available. The prison laid out, in both the handbook and directives, which types of complaints were covered – and which were not covered – by the grievance process. Pet. App. 77-78; J.A. 312. The prison provided the

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[9] *See, e.g.*, *DeBrew v. Atwood*, 792 F.3d 118, 128 (D.C. Cir. 2015) (prison officials refused to provide necessary documents); *Davis v. Fernandez*, 798 F.3d 290, 295 (5th Cir. 2015) (prison staff mistakenly told inmate that process did not have a second step); *Nunez v. Duncan*, 591 F.3d 1217, 1226 (9th Cir. 2010) (warden sent inmate on "wild goose chase" by referring him to wrong regulation); *Tuckel v. Grover*, 660 F.3d 1249, 1252 (10th Cir. 2011) (officers threatened and intimidated inmate into failing to submit grievance); *Kaba v. Stepp*, 458 F.3d 678, 685-86 (7th Cir. 2006) (prison refused to provide inmate grievance forms); *Mitchell v. Horn*, 318 F.3d 523, 529 (3d Cir. 2003) (refused to provide forms); *Miller v. Norris*, 247 F.3d 736, 740 (8th Cir. 2001) (refused to provide forms).

handbook to Mr. Blake and made the full directives available in the library. Pet. App. 76, 78. The prison even offered an orientation session and an administrative remedy coordinator to answer questions. Pet. App. 74-75, 78. This was far from a case of a prison deliberately creating byzantine "procedural requirements for the purpose of tripping up all but the most skillful prisoners." *Woodford*, 548 U.S. at 102 (declining to decide whether even such byzantine requirements would make a remedy unavailable under the PLRA).

Mr. Blake failed to read the directives, ask for assistance, or otherwise attempt to understand the administrative remedy process. As Judge Agee pointed out in dissent, it is telling that Mr. Blake did not believe he was "precluded" from using the administrative grievance process; he merely assumed that it was "unnecessary" for him to do so. Pet. App. 25 (emphasis omitted); *see* J.A. 173-74. Mr. Blake's mistaken assumption does not, and cannot, render Maryland's grievance process unavailable.

II. The Judicially-Crafted Reasonable Belief Exception Is Inconsistent with the Statutory History and Purpose of the PLRA.

The Fourth Circuit's "reasonable belief" exception to the PLRA's exhaustion requirement not only offends the plain language of the statute, but it is inconsistent with both the history of the PLRA's

exhaustion provision and with the broader purposes of the PLRA itself.

1. The "statutory history" of the PLRA's exhaustion provision "confirms" what "Congress meant" when it mandated exhaustion. *Booth*, 532 U.S. at 739; *see Hallstrom*, 493 U.S. at 28 (finding "[n]othing in the legislative history" that would "militate[ ] against honoring the plain language of the [statutory] notice requirement"). Congress enacted the PLRA's exhaustion requirement with the purpose of reducing the volume of meritless prisoner lawsuits, *Porter*, 534 U.S. at 524, and achieving "fewer and better prisoner suits," *Jones*, 549 U.S. at 203; *see Bruce v. Samuels*, ___ U.S. ___, No. 14-844, 2016 WL 112684, at *3 (Jan. 12, 2016) (explaining that Congress intended the PLRA to "filter out the bad claims [filed by prisoners] and facilitate consideration of the good") (quoting *Coleman v. Tollefson*, 575 U.S. ___, 135 S. Ct. 1759, 1762 (2015)).

To further this purpose, Congress mandated that state and federal prisoners exhaust all available administrative remedies before bringing suit with respect to conditions of confinement. *See* 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (remarks of Sen. Kyl) (stating that exhaustion of administrative remedies would be required), *reprinted in* Reems & Manz, at doc. 8. In doing so, Congress changed prior law in three significant ways: (1) it made administrative exhaustion a prerequisite to filing suit, not simply a basis for granting a temporary stay of litigation; (2) it eliminated the prior CRIPA requirement that judges

conduct an *ad hoc* "interests of justice" analysis to determine whether to require exhaustion; and (3) it deleted the requirement that administrative remedies be "plain, speedy, and effective," before exhaustion could be mandated. *Booth*, 532 U.S. at 739. *Compare* 42 U.S.C. § 1997e(a)(1) (1994) *with*, Pub. L. No. 104-134, § 101, 110 Stat. 1321, codified at 42 U.S.C. § 1997e(a) (1996).

These changes leave no doubt that Congress intended to eliminate the prior judicial discretion to dispense with exhaustion in prisoner suits. *See Booth*, 532 U.S. at 539-41; 141 Cong. Rec. H14098 (daily ed. Dec. 6, 1995) (remarks of Rep. LoBiondo), *reprinted in* Reems & Manz, at doc. 18. The PLRA expressly eliminated the ability of courts to make decisions regarding whether exhausting administrative remedies was justified in any particular case, as well as whether the available administrative remedies were worth exhausting.

The Fourth Circuit's *ad hoc* reasonable belief exception improperly restores to courts a significant amount of the discretion expressly removed by Congress when it eliminated the authority for judges to decide whether exhaustion was in the "interests of justice." Reading such an exception into the statute now would be "highly anomalous given Congress's elimination of judicial discretion to dispense with exhaustion." *Porter*, 534 U.S. at 529. After all, when Congress amends a statute, courts must presume that Congress "intend[ed] its amendment to have real and substantial effect." *Stone*, 514 U.S. at 397; *see*

Nyhuis, 204 F.3d at 72 (interpreting PLRA's amendments to exhaustion requirements to have "real and substantial effect" (quoting *Stone*)). The Fourth Circuit's reasonable belief exception is effectively a new type of *ad hoc* "interests of justice" exception, and it would thus deprive Congress's amendment of substantial effect.

In addition, the Fourth Circuit's attempt to justify its reasonable belief exception by calling Maryland's administrative procedures "murky," Pet. App. 15, conflicts with Congress's decision to remove the former requirement that a particular remedy be "plain, speedy, and effective." By removing this language, Congress made clear that courts were not to scrutinize the adequacy of a prison's administrative remedy process to determine whether it met a particular standard of clarity, timeliness, and effectiveness. *See Nyhuis*, 204 F.3d at 74 (stating that in amending § 1997e(a), "Congress intended to save courts from spending countless hours educating themselves in every case as to the vagaries of prison administrative processes, state or federal.").

As this Court observed in *Booth*, when Congress deleted the "plain, speedy, and effective" standard and "the requirement that administrative procedures must satisfy certain 'minimum acceptable standards' of fairness and effectiveness," Congress made a deliberate choice to dispense with those requirements. *Booth*, 532 U.S. at 740 & n.5; *see also Alexander*, 159 F.3d at 1326 (stating that removal of the qualifiers "plain, speedy, and effective" indicated that "Congress

no longer wanted courts to examine the effectiveness of administrative remedies but rather to focus solely on whether an administrative remedy program is 'available' in the prison involved"). These alterations in the statutory text indicate that "Congress has mandated exhaustion," *Booth*, 532 U.S. at 740, regardless of the clarity, speed, or effectiveness of the grievance process.

2. The Fourth Circuit's judicially-crafted exception is also inconsistent with the two primary purposes of the PLRA, which were: (1) to relieve courts of litigation burden by reducing the quantity of meritless suits, *see Porter*, 534 U.S. at 524-25, and (2) to return prison administration to the prisons, rather than the courts, *Woodford*, 548 U.S. at 93 ("The PLRA attempts to eliminate unwarranted federal-court interference with the administration of prisons, and thus seeks to afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." (footnote omitted)). *See also* 141 Cong. Rec. H14098 (daily ed. Dec. 6, 1995) (remarks of Rep. LoBiondo) (explaining that by requiring exhaustion "we will reduce the intrusion of the courts into the administration of the prisons"), *reprinted in* Reems & Manz, at doc. 18; 141 Cong. Rec. S14414 (daily ed. Sept. 27, 1995) (remarks of Sen. Hatch) ("We believe that it is time to wrest control of our prisons from the lawyers and the inmates and return that control to competent administrators appointed to look out for society's interests as

well as the legitimate needs of prisoners."), *reprinted in* Reems & Manz, at doc. 12.

One can scarcely imagine a proposition more likely to frustrate the first of these congressional purposes than the Fourth Circuit's amorphous and all-too-easily satisfied reasonable belief exception. It inevitably will result in more lawsuits being filed without affording prison administrators any opportunity to resolve the complaints through the internal mechanisms designed for that purpose.[10] When a court creates an exception to exhaustion, it also creates "a continuing invitation to litigation." Raoul Berger, *Exhaustion of Administrative Remedies*, 48 Yale L.J. 981, 1006 (1939); *see also* Marcia R. Gelpe,

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[10] Before the Second Circuit recognized a similar exception in *Giano* in 2004, the number of prisoner suits filed in district courts in that circuit was declining, from 1,865 in 2000 to 1,372 in 2004. *See* United States Courts, Statistics & Reports, Table C-3, U.S. District Courts Judicial Business Tables (Sept. 30, 2000 & Sept. 30, 2004). Within two years following the decision in *Giano*, that trend reversed, ultimately rising to 2,078 in 2012, an increase of more than 50% above the number of suits recorded in 2004. *Id.*, Table C-3 (Sept. 30, 2012). With the exception of an aberration in 2014, the number of prisoner suits within the Second Circuit through 2015 has remained steady. *See id.*, Table C-3 (Sept. 30, 2004 – Sept. 30, 2015). In contrast, the number of filings nationally in the year 2000 was 25,504, decreasing to 23,499 in 2004, and remaining fairly steady through 2012, when there were 25,036 such filings, an increase of less than 7% since 2004. United States Courts, Statistics & Reports, Table C-2, U.S. District Courts Judicial Business Tables (Sept. 30, 2000 – Sept. 30, 2015). The number of filings in 2015 was 26,519. *Id.*, Table C-2 (Sept. 30, 2015).

Exhaustion of Administrative Remedies: Lessons from Environmental Cases, 53 Geo. Wash. L. Rev. 1, 27 (1984). Conversely, as this Court has observed, a simple rule without exceptions "avoids the litigation that otherwise would inevitably arise in trying to identify the precise contours of [a] suggested exception." *McCarthy v. Bronson*, 500 U.S. 136, 143 (1991).

The PLRA's exhaustion requirement specifically furthers the congressional purpose of reducing the quantity of meritless prisoner suits in three ways: First, "corrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation." *Porter*, 534 U.S. at 525 (citing *Booth*, 532 U.S. at 737). Second, "the internal review might 'filter out some frivolous claims.'" *Id.* (quoting *Booth*, 532 U.S. at 737). Finally, "for cases ultimately brought to court, adjudication could be facilitated by an administrative record that clarifies the contours of the controversy." *Id.* (citing *Booth*, 532 U.S. at 737); *see also Woodford*, 548 U.S. at 94.

The Fourth Circuit's exception undermines all of these advantages that Congress sought to achieve. By allowing exhaustion to be bypassed without pursuing the administrative route specifically designed to resolve grievances, the exception decreases the possibility that claims will be resolved short of litigation and also decreases the ability of the prisons to weed out frivolous claims. Similarly, by allowing exhaustion to be bypassed in favor of a different process that serves a different end, the Fourth Circuit's exception

is unlikely to result in the creation of an administrative record that will be as effective in clarifying the contours of the controversy.

The Fourth Circuit's application of the exception in this case is instructive. The court allowed Mr. Blake to bypass the administrative procedure designed to hear and resolve inmate complaints; it deemed him to have "substantively" exhausted available remedies on the ground that prison authorities, acting on their own initiative, undertook a separate procedure designed for the entirely separate purpose of investigating an officer's misconduct so that the appropriate state officials could determine whether to impose discipline or refer the matter for criminal prosecution. Under the logic of the Fourth Circuit's decision, which *assumes* that the prisoner read and was confused by the applicable guidance documents even when the evidence is to the contrary, Pet. App. 12 n.4, a prisoner who merely becomes aware that the prison is conducting an internal investigation can always proceed to court without exhausting administrative remedies.

This broad exception would eviscerate the PLRA's mandatory exhaustion requirement. As this Court has explained, "[t]he benefits of exhaustion can be realized only if the prison grievance system is given a fair opportunity to consider the grievance," and "[t]he prison grievance system will not have such an opportunity unless the grievant complies with the system's critical procedural rules." *Woodford*, 548 U.S. at 95. If an inmate can satisfy the exhaustion requirement

even when bypassing it completely, the grievant will have little incentive to comply and a significant incentive to claim that he was confused. It is "highly implausible" that Congress intended to provide prisoners such a "strong inducement to skip the administrative process." *Booth*, 532 U.S. at 741.

The Fourth Circuit's exception is also inconsistent with Congress's second purpose in enacting the PLRA, namely, removing courts from involvement in the day-to-day operations of prisons. Contrary to that goal, a reasonable belief exception will embroil federal courts in the nuances of a prison's grievance system to determine whether it was reasonable for a prisoner to believe he had exhausted his remedies. That level of involvement in reviewing a prison's internal policies is particularly inappropriate in light of this Court's oft-repeated warnings against excessive interference by the federal courts in prison operations. *See, e.g.*, *Florence v. Board of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. ___, 132 S. Ct. 1510, 1515-16 (2012) (generally discussing "the importance of deference to correctional officials" owed by courts); *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973) ("It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.").

As Judge Agee recognized, the Fourth Circuit's rule would also require prison officials to "anticipate every potential misunderstanding that an inmate might have" and foreclose those misunderstandings

in writing. Pet. App. 26. That necessity would not only impose a "substantial new burden on state correctional officials," but might also compel those officials to adopt "overly complicated administrative procedures" that could "in turn produce even more confusion among prisoners." Pet. App. 26. Otherwise, exhaustion would be excused anytime prison regulations are not so detailed as to specifically negate any conceivable basis for confusion, even where the inmate has made no attempt to understand the process. This cannot be what Congress intended.

Consistent with the concerns expressed by Judge Agee, this Court has rejected arguments that exhaustion should depend on a parsing of the remedies available through the administrative process, *Booth*, 532 U.S. at 741, or a review of whether a prisoner substantially complied with an administrative process despite defaulting on procedural requirements, *Woodford*, 845 U.S. at 90-94. "Since the internal problems of state prisons involve issues so peculiarly within state authority and expertise, the States have an important interest in not being bypassed in the correction of those problems." *Porter*, 534 U.S. at 531 (quoting *Preiser*, 411 U.S. at 492). There is no justification for permitting inmates to bypass prison grievance procedures merely because the inmate misunderstood them.

III. "Reasonable Belief" Is Not a Traditional Exception to Administrative Exhaustion.

Even if the Fourth Circuit were correct that Congress had intended to import traditional, judge-made exceptions from administrative law into the PLRA's exhaustion requirement, such an intent would not authorize the reasonable belief exception adopted by the Fourth Circuit because there was no such common-law exception to be imported. This Court has recognized only three sets of traditional exceptions to administrative exhaustion: (1) where "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action," *McCarthy*, 503 U.S. at 146-47; (2) where there is "some doubt as to whether the agency was empowered to grant effective relief," *id.* at 147 (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14 (1973)); and (3) "where the administrative body is shown to be biased or has otherwise predetermined the issue before it," *id.* at 148. None of these incorporates or justifies a "reasonable belief" exception.

The first of these exceptions is sometimes referred to as the "hardship" exception. *See Shalala*, 529 U.S. at 13 (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)). This exception applies to situations in which the administrative process might take an unreasonable or indefinite period of time, *see, e.g.*, *Coit Independence Joint Venture v. Federal Sav. & Loan Ins. Corp.*, 489 U.S. 561, 587 (1989) (plaintiff not required to exhaust where there was no reasonable time limit on consideration of administrative

claims); *Walker v. Southern Ry. Co.*, 385 U.S. 196, 198 (1966) (possible delay of 10 years in considering administrative claim rendered exhaustion unnecessary), or where enforcement of an exhaustion requirement would cause irreparable harm or preclude a defense to criminal liability, *see, e.g.*, *Bowen v. City of New York*, 476 U.S. 467, 483 (1986); *Hirsch*, 331 U.S. at 773 (allowing consideration of "impending irreparable injury flowing from delay" in administrative procedure in determining whether exhaustion is required); *McKart v. United States*, 395 U.S. 185, 197 (1969) (use of the exhaustion doctrine in criminal cases can be "exceedingly harsh," thus requiring a governmental interest sufficient to outweigh the "severe burden" imposed on the defendant).

Second, this Court has recognized an exception to judge-made exhaustion for futility where the agency lacks power to provide relief. *See McCarthy*, 503 U.S. at 147 Under this exception, a plaintiff's failure to raise constitutional claims before an administrative body that is not competent to resolve them will not necessarily preclude him from raising those claims in subsequent court proceedings. *See, e.g.*, *Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 406-07 (1988) (not requiring submission of regulatory challenge to fiscal intermediary who lacked authority to deviate from the applicable rules and regulations); *Moore v. City of East Cleveland*, 431 U.S. 494, 497 n.5 (1977); *McNeese v. Board of Ed. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 675 (1963) (students were not required to file complaint with school superintendent

who had "no power to order corrective action"). As discussed above, this Court has already rejected the notion of incorporating into the PLRA this traditional exception to judicially-prescribed exhaustion. *Booth*, 532 U.S. at 741 n.6.

Third, this Court has recognized a traditional exception to judicially-mandated administrative exhaustion where the administrative body has a demonstrated bias or has "predetermined the issue before it." *McCarthy*, 503 U.S. at 148; *see also, e.g.*, *Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (requiring exhaustion when the final agency decision-maker had already reached determination on merits "would be to demand a futile act"); *Association of Nat'l Advertisers, Inc. v. Federal Trade Comm'n*, 627 F.2d 1151, 1156-57 (D.C. Cir. 1979) (considering dispute regarding bias of FTC Chairman notwithstanding failure to exhaust administrative remedies).

For each of these exceptions, state of mind is irrelevant. Instead, the focus of the first exception is on the objective hardship caused by requiring compliance with the administrative procedure, and the focus of the second and third exceptions is on the competence, authority, or bias of the administrative body itself. The leading treatises on administrative law have similarly identified exceptions to judge-made exhaustion requirements that focus on irreparable harm or the administrative body itself, but no recognized exception depends on a claimant's beliefs as to whether he or she had exhausted. *See, e.g.*, 33 Charles Alan Wright & Charles H. Koch, Jr., *Federal*

Practice & Procedure, Judicial Review of Administrative Action § 8398, at 404-11 (1st ed. 2006); 2 Richard J. Pierce, *Administrative Law Treatise*, § 15.2, at 1222-30 (4th ed. 2002).

The Fourth Circuit did not rely on any authority identifying reasonable belief as a traditional exception to administrative exhaustion. Instead, the Fourth Circuit relied only on the Second Circuit's decision in *Giano* and Justice Breyer's concurring opinion in *Woodford*, in which he both cited *Giano* and, separately, suggested that the PLRA might incorporate traditional exceptions to administrative exhaustion. Pet. App. 9-10 (citing *Giano*, 300 F.3d at 676 and *Woodford*, 548 U.S. at 103-04 (Breyer, J., concurring)).

However, Justice Breyer's list of traditional exceptions to administrative exhaustion included only the recognized exceptions for constitutional claims, futility, hardship, and inadequate or unavailable administrative remedies. *Woodford*, 548 U.S. at 103 (Breyer, J., concurring). Although Justice Breyer cited *Giano*, it was for the limited proposition that "the PLRA's proper exhaustion requirement is not absolute." *Id.* at 104. Justice Breyer thus did not endorse *Giano*'s reasonable belief exception; to the contrary, his concurrence suggested that the lower court on remand consider only whether the case "falls into a *traditional* exception that the statute implicitly incorporates." *Id.* (emphasis added).

Giano also does not demonstrate that "reasonable belief" is a traditional exception to administrative exhaustion. Although the Second Circuit cited circuit court cases, including contemporaneously decided companion cases, for the general proposition that the PLRA's exhaustion requirement is not absolute, the court did not cite a single authority identifying the reasonable belief exception as a traditional exception to administrative exhaustion. *See Giano*, 380 F.3d at 678-79. Thus, even if Congress had intended to import into the PLRA traditional exceptions to judge-made administrative exhaustion requirements, that would not justify the Fourth Circuit's reasonable belief exception.

IV. Even If the Fourth Circuit Were Correct That a Reasonable Belief Exception Should Be Read into the PLRA, the Court of Appeals Misapplied That Exception.

Even if a judge-made reasonable belief exception could be read into the PLRA, the court of appeals erred in its application of the exception. In the court's view (1) Mr. Blake reasonably believed that he had exhausted his remedies by participating in an internal affairs investigation and (2) the investigation served the same substantive purposes as the administrative grievance process. Pet. App. 11-15. But the Fourth Circuit was wrong on both counts.

1. As an initial matter, Mr. Blake could not have "reasonably interpreted" Maryland's grievance

procedures, Pet. App. 15, because he "never bothered to read [them]," Pet. App. 20. The Fourth Circuit's decision bypasses these inconvenient facts by "assum[ing] that the inmate possessed all available relevant information," and concluding that a prisoner who reviewed all of that information might reasonably have been confused by it. Pet. App. 12-14 & n.4. Thus, the court of appeals determined that it was reasonable for Mr. Blake to believe that he had exhausted administrative remedies based on the majority's consideration of readily-available information that Mr. Blake admittedly did not review and on which he did not rely.

By contrast, it was undisputed in *Giano* that the inmate actually read the rules and regulations at issue. 380 F.3d at 676 ("[T]he plaintiff reasonably interpreted DOCS regulations to mean that his only administrative recourse was to appeal his disciplinary conviction."); *id.* at 678 ("The defendants argue that Giano misread DOCS regulations."). Having failed even to read or consider the applicable materials, Mr. Blake's belief that he had exhausted administrative remedies could not have been reasonable. For that reason alone, the court of appeals must be reversed.

Moreover, had Mr. Blake actually reviewed the applicable materials or taken any steps to try to understand the process, he would have quickly learned that it was available for "all" types of complaints, expressly including complaints involving the "use of force." Pet. App. 77-78; J.A. 312. He also would

have gleaned from the materials that the ARP procedure was subject to only four exceptions, none of which had anything to do with the existence of an IIU investigation. Pet. App. 77-78; J.A. 312. The court of appeals nevertheless deemed these procedures to be ambiguous merely because they did not explicitly rule out the possibility that the existence of an IIU investigation might preclude using the prison's administrative remedy process. Pet. App. 12-14.

However, nothing about the mutual existence of two different sets of procedures serving different purposes and established and described in different documents should be expected to give rise to a presumption that the existence of one would preclude use of the other. Contrary to the Fourth Circuit's approach, "a jail's grievance policies need not explicitly provide for all possible scenarios in which a prisoner may seek to file a grievance." *Napier v. Laurel Cnty.*, 636 F.3d 218, 223 (6th Cir. 2011).

Having made the counterfactual assumption that Mr. Blake reviewed the materials available to him, and having erroneously found those materials wanting, the court of appeals then placed the burden on Lt. Ross to disprove that the grievance process was ambiguous and to disprove the reasonableness of Mr. Blake's purported interpretation. Pet. App. 14. As this Court has made clear, however, the burden to prove an exception to exhaustion rests with the party seeking to bypass the requirement. *See Honig v. Doe*, 484 U.S. 305, 327 (1988); *see also Hubbs v. Suffolk Cnty. Sheriff's Dep't*, 788 F.3d 54, 59 (2d Cir. 2015)

(placing the burden on inmate to prove that he should be excused from exhaustion under the PLRA). Mr. Blake failed to prove that Maryland's procedures were ambiguous or that he had any reasonable belief that he had complied with those procedures, and the Fourth Circuit should not have excused him from the exhaustion requirement.

2. With respect to the second prong of the Fourth Circuit's test, the internal investigation into Lt. Madigan's conduct did not serve, and could not have served, the same substantive purposes as the exhaustion of administrative remedies. As three courts of appeals have held, "prisoner grievance proceedings and internal investigations serve different and not entirely consistent purposes." Pet. App. 19-20 (citing *Pavey v. Conley*, 663 F.3d 899, 905 (7th Cir. 2011); *Panaro v. City of N. Las Vegas*, 432 F.3d 949, 953 (9th Cir. 2005); *Thomas v. Woolum*, 337 F.3d 720, 734 (6th Cir. 2003), *abrogated on other grounds by Woodford*, 548 U.S. at 87)).

Requiring that a prisoner exhaust available administrative remedies "allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court." *Jones*, 549 U.S. at 204. The same is not true for an internal investigation, which is not a dispute resolution process. An internal investigation "may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner who was on the receiving end of the employee's malfeasance." *Pavey*, 663 F.3d at 905. In

other words, although an internal investigation may result in subsequent disciplinary action against a correctional officer, the "only potential remed[ies] available to [the prisoner are] through the administrative grievance procedure." *Panaro*, 432 F.3d at 953.

Although Mr. Blake might have preferred not to file a grievance, the PLRA does not permit prisoners to "pick and choose how to present their concerns to prison officials." *Pavey*, 663 F.3d at 905 (citing *Woodford*, 548 U.S. at 95; *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002)). Instead, "to properly exhaust administrative remedies prisoners must 'complete the administrative review process in accordance with the applicable procedural rules' – rules that are defined not by the PLRA, but by the prison grievance process itself." *Jones*, 549 U.S. at 218 (quoting *Woodford*, 548 U.S. at 88). "[I]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." *Id.*

Here, Maryland's applicable procedural rules required that Mr. Blake use the administrative remedy procedure, not an IIU investigation. *See Pavey*, 663 F.3d at 905 (explaining that the PLRA's exhaustion requirement "is concerned with the 'remedies' that have been made available to prisoners"); *Panaro*, 432 F.3d at 949 (observing that because the only potential remedies were available through the administrative grievance procedure, an inmate could not exhaust administrative remedies through participating in an internal affairs investigation); *Thomas*, 337 F.3d at 734 (explaining that the PLRA's exhaustion

requirement "is directed at exhausting the *prisoner's* administrative remedies," which a "Use of Force" investigation cannot accomplish (internal quotation omitted)). "If a prisoner can be required to submit his grievance in the particular manner and within the precise period of time designated by the prison's administrative procedures, then he must also be required to present his grievance in the proper forum." *Pavey*, 663 F.3d at 906.

Under Maryland's rules, an inmate can obtain a remedy only through the available administrative remedy procedures, while the IIU investigates allegations that a correctional officer has committed a crime or other serious misconduct, reports on the outcome of the investigation, and notifies the appropriate state officials of the result. Md. Code Ann., Corr. Servs. § 10-701; COMAR § 12.11.01.03A(1). As previously explained, the IIU does not have authority to discipline an officer or to afford any remedy to an inmate. *See supra* at 8-9. As a consequence, in the absence of any request from Mr. Blake for an administrative remedy, the prison had no opportunity to resolve any of Mr. Blake's claims for relief before he filed this suit. This in turn subverted one of the main purposes of the PLRA's exhaustion requirement: "reducing litigation to the extent complaints are satisfactorily resolved." *Jones*, 549 U.S. at 219.

The internal investigation here also did not provide the prison with a sufficient opportunity to compile a useful record as to claims against Lt. Ross. The IIU investigation was a criminal investigation

into Mr. Madigan's assault on Mr. Blake. J.A. 186. As such, the investigation identified Mr. Madigan as the only relevant "suspect" and focused on whether Mr. Madigan's use of force was excessive under the circumstances. J.A. 187, 191-95. Conversely, Lt. Ross was treated by the investigation merely "as a peripheral bystander," Pet. App. 23, and the final report contains no findings whatsoever about his conduct, J.A. 186-95.

In sum, the IIU investigation did not serve the purposes of the prison's available administrative remedy procedure, and Mr. Blake's cooperation in that investigation did not comply with the prison's requirements for an inmate seeking a remedy. The Fourth Circuit thus erred, even under its own test, in excusing Mr. Blake's failure to properly exhaust. Because the PLRA mandates that a prisoner exhaust available administrative remedies before bringing suit, and it is undisputed that Mr. Blake failed to file a grievance under the prison's administrative remedy procedure, the decision of the court of appeals should be reversed.

CONCLUSION

The judgment of the United States Court of Appeals for the Fourth Circuit should be reversed.

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